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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/367,714	01/14/00	SHAI	Y SHAI=2

001444 HM12/1212
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EXAMINER	
LUKTON,D	
ART UNIT	**PAPER NUMBER**
1653	13

DATE MAILED: 12/12/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/367,714	Shal
Examiner	**Group Art Unit**
David Lukton	1653

☒ Responsive to communication(s) filed on *Sep 20, 2000*

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *one* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) *1-26* is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims *1-26* are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

A restriction is imposed. First, however, the following subgenera are defined:

G1: Within this subgenus, all amino acids within the peptide are of the L-configuration, i.e., the peptide contains no amino acids of the D-configuration

G2: within this subgenus, the cytolytic agent is as defined in part 3 of claim 1, except that G1 is excluded, i.e., G2 encompasses a complex consisting of two or more cytolytic peptides bundled together by means of a linker, which peptides contain at least one D-amino acid, and which complex otherwise meets the requirements of part 3 of claim 1.

G3: Within this subgenus, the cytolytic agent can be whatever the claims permit, provided that G1 and G2 are excluded.

*

Restriction to one of the following inventions is required under 35 U.S.C. §121:

I. Claims 1-5, 7-12, 18-26, drawn to cytolytic agents of subgenus G3.

II. Claims 1, 15, 16, 22-26, drawn to cytolytic agents of subgenus G2.

III. Claims 1, 15, 16, 18, 22-26, drawn to cytolytic agents of subgenus G1.

Claims 6, 13, 14, 17 have not been grouped. These are drawn to species, and will be joined with the elected group.

The claimed inventions are distinct.

Subgenus G1 and G2 have been created. With respect to genus G1, it is not even clear

that applicants intend to claim peptides that consist entirely of L-amino acids, but if this invention is of interest, applicants can elect Group III. It is the assertion of the examiner that there are many previously disclosed peptides within this group. However, if applicants elect Group III, and it turns out that all embodiments within this group are completely novel, it would be appropriate at that point to consider the possibility of extending the search to include peptides which contain one or more D-amino acids. Subgenus G2 mandates the presence of a linker moiety, which is distinct from peptides which have no such group present. Presumably applicants will elect Group I, which encompasses most of the claimed embodiments.

Applicant is advised that for the response to this requirement to be complete, an election of the invention to be examined must be indicated, even if the requirement is traversed (37 C.F.R. 1.143).

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

. . . .

In addition to the foregoing, applicants are be required under 35 U.S.C. §121 to elect a disclosed specie for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. A "specie" is a specific peptide that is fully defined in all respects, i.e., a specific sequence, including the specific positions of any D-amino acids, the presence or absence of a linker, and the presence or absence of a mixture.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a generic claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are witten in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP 809.02(a).

Should applicant traverse on the ground that the species are not patentable distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. §103 of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton. Phone: (703) 308-3213.

An inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

DAVID LUKTON
PATENT EXAMINER
GROUP 1800